

AMENDMENTS TO THE DRAWINGS

Please delete Figure 7 of the drawings.

REMARKS

I. PRELIMINARY REMARKS

The Applicant appreciates the Examiner's continued acknowledgement that claims 2, 9, 14, and 21 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, first and second paragraphs.

The specification has been amended in accordance with the Examiner's recommendation to recite that the closure comprises a spout with a twist away element and a removable cap.

Claim 1 has been amended to include the limitations of dependent claim 2. The claim amendment does not introduce new matter into the application or into the claims. Importantly, the claim amendment does not raise new issues necessitating a new search, as the limitations of claim 2 have been previously searched. Accordingly, Applicant respectfully submits that entry of the amendment is proper.

Claims 2, 8, 10, 19, and 20 have been canceled.

II. APPLICANT'S INTERVIEW SUMMARY

On June 23, 2009, Applicant's attorneys, Jeffery S. Sharp and Jennifer Burnette, conducted a telephonic interview with Examiner Hylton to discuss the rejections of claims 1-22 under 35 U.S.C. § 112, first and second paragraphs of the final official action dated April 13, 2009. Applicant's attorneys directed Examiner Hylton's attention to page 6, lines 22-25, of the specification as an example of support in the specification for the claimed closure. As evidenced in the Examiner's Interview Summary dated June 26, 2009, Examiner Hylton acknowledged that the specification provides support for a closure comprising a cap (2) and a spout (10).

III. OUTSTANDING REJECTIONS

The drawing Figure 7 is objected to as presenting new matter.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

Claims 1-22 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement on the basis that there is no disclosure for a closure comprising a spout and a removable cap.

Claims 1-22 also stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for setting forth the structure of the container as the structure of the closure.

Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 stand rejected under 35 U.S.C. § 102(b) as anticipated by Deussen, U.S. Patent No. 4,134,511.

Claims 3 and 7 stand rejected under 35 U.S.C. § 103(a) as being obvious over Deussen.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as obvious over Deussen in view of Bayer, U.S. Patent No. 4,688,703.

IV. PATENTABILITY ARGUMENTS

A. The Objection to Figure 7 as Presenting New Matter is Moot.

By the foregoing amendment, Figure 7 has been deleted. Accordingly, the objection to Figure 7 is moot.

B. The Objection to the Specification as Failing to Provide Proper Antecedent Basis for the Claimed Subject Matter Should be Withdrawn.

The objection to the specification as failing to provide proper antecedent basis for the claimed subject matter should be withdrawn. The specification discloses at page 6, lines 22-25 that “[t]he closure comprises a spout 10 and a cap 2.” The specification further discloses that the spout includes a twist away element 3. *See* the specification at p. 2, lines 34-36, p. 6, lines 25-28. However, in an effort to advance the application to allowance, the specification is also amended herein as recommended by the Examiner to recite that the closure comprises a spout with a twist away element and a removable cap. Support for the amendment to the specification can be found in the specification as indicated above and in claim 1 as originally filed.

C. The Rejections of Claims 1-22 Under 35 U.S.C. § 112, First Paragraph Should Be Withdrawn.

The rejection of claims 1-22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement should be withdrawn. The specification provides adequate support for a closure comprising a spout and a removable cap. For example, p. 6, lines 22-25, which discloses with reference to Figure 5 that “[t]he closure comprises a spout 10 and cap 2.” Furthermore, the claims, as originally filed, recited a closure comprising a spout and a removable cap. Accordingly, Applicant respectfully submits that the recitation of a closure comprising a spout and a cap in claims 1-22 is adequately supported by the application as originally filed.

D. The Rejection of Claims 1-22 under 35 U.S.C. § 112, Second Paragraph, Should be Withdrawn.

The rejection of claims 1-22 under 35 U.S.C. § 112, second paragraph, as indefinite should be withdrawn. As shown above, the specification discloses a closure comprising a spout 10 and a removable cap 2. *See* the specification at p. 6, lines 22-25. A closure having a spout and a removable cap is clearly illustrated and described in the specification.

During the June 23, 2009, telephone interview, Examiner Hylton expressed that she believe that the closure structure recited in the claims was more appropriately directed to the structure of the tamper evident container, because no structure for retaining the spout on the container in a tamper evident fashion was recited in the claim or described in the specification. The Examiner, however, improperly reads the preamble of the claims, “A closure for a tamper evident container,” as a limitation of the claim. “If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended uses of the invention [i.e., “for a tamper evident container”], rather than any distinct definition of any one of the claimed invention’s limitations, then the preamble is *not* considered a limitation and is of *no significance* to the claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999). The body of claims 1-22 fully sets forth the structure of the closure (i.e. the cap and the spout). The preamble merely states the intended use or purpose of the claimed closure, that is the preamble merely indicates that the closure is intended for use with a tamper evidence container. The elements of the container or connections of the

closure to the container are not needed to structurally define the closure, which includes the spout and the cap. Accordingly, Applicant respectfully submits that claims 1-22 are definite.

E. The Rejections of Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 Under 35 U.S.C. § 102(b) over Deussen Should Be Withdrawn.

The rejection of claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 under 35 U.S.C. § 102(b) over Deussen should be withdrawn in view of the amendments to independent claim 1. Claim 1 has been amended to include the limitations of allowable claim 2. Accordingly, Applicant respectfully submits that independent claim 1 is now in condition for allowance. Claims 4-6, 8, 10-13, 15, 16, 19, 20, and 22 depend from independent claim 1, and, therefore, are also allowable.

F. The Rejections of Claims 3 and 7 Under 35 U.S.C. § 103 in view of Deussen Alone Should Be Withdrawn.

As indicated above, claim 1 has been amended to include the limitations of allowable claim 2, and is, therefore, allowable. Claims 3 and 7 depend from independent claim 1. Accordingly, claims 3 and 7 are also allowable.

G. The Rejections of Claims 17 and 18 Under 35 U.S.C. § 103 in view of Deussen and Bayer Should Be Withdrawn.

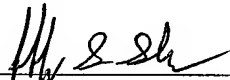
As indicated above, claim 1 has been amended to include the limitations of allowable claim 2, and is, therefore, allowable. Claims 17 and 18 depend from independent claim 1. Accordingly, claims 17 and 18 are also allowable.

CONCLUSION

For the foregoing reasons, it is submitted that each of claims 1-22 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, she is invited to contact the undersigned attorney at the number below.

Dated: August 4, 2009

Respectfully submitted,

By  _____
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